IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3734 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINCHANDRA GIRDHARLAL PANDYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3734 of 1988

MR PM RAVAL for Petitioner No. 1

MR HEMANG R RAWAL for Petitioner No. 1

MR.M.S. RAO, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1-2,3

MR HS MUNSHAW for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 02/04/2004

ORAL JUDGEMENT

A person having worked for all his life as a Peon in the Government Rural Health Centre, Village Bhurakhiya, Taluka Lathi, District Amreli has retired from service on 30.09.2003 on his reaching the age of superannuation of 60 years. The said person is before

this Court seeking justice on the facts which are as under.

2. An Ayurvedic Hospital was started at Village Bhurakhiya, Taluka Lathi, District Amreli, an area comparatively undeveloped in the State. Initially the said Hospital was started as a 'grant in aid hospital', managed by Gram Panchayat of Village Bhurakhiya, then for the good luck of the residents of the area, Panchayati Raj came into being and on 09.08.1963 the hospital was taken over by the District Panchayat as 'Swa Bhandol Sanchalit' (managed by own funds). The petitioner served as a daily wager in this hospital right from day one, i.e. when it started as grant-in-aid hospital. But in any case, from 09.08.1963 he was appointed by order No.NOK/ Naman/9/ 1306 dated 01.07.1968 issued by the Taluka Development Officer, Lathi, on temporary basis on monthly salary of Rs.10/-, only.

3. The Ayurvedic Hospital, Bhurakhiya was then converted into Rural Health Centre, Class II by Government Resolution No.AVD/ 1084/ 1044/ 86/ CHH dated 17.03.1986 issued by the Health and Family Welfare Department of the State Government and on account of that since 01.04.1986 the State Government took control of the said hospital. By another Government Resolution No.ADR/ 1085/ 2426/ 86/ CHH dated 16.04.1986, the Health & Family Welfare Department sanctioned the following posts.

Nomenclature of the post	No. of posts
(i) Medical Officer, Class II	1
(ii) Compounder, Class III	1
(iii) Peon, Class IV	1

On a regular set up being sanctioned in which a post of Peon was also included, the case of the petitioner was required to be considered who was serving since 1963, may be as a Part Time Peon and had put in almost 23 years of service. It is not disputed even in the report of the District Development Officer that the petitioner continued to discharge his duties as Part Timer for all those years. The district level authorities did make a proposal to absorb the petitioner as permanent Peon by a letter No.AYU/ 1/ Bhurakhiya/ 2974 dated 18.10.1986 to the Director of Indian Medicine & Homeopathy System, but then the said proposal was responded by the said authority by its letter No.MKM/ 3/ 41741/ K dated 11.12.1986 and it was conveyed that the names be called for from the Employment Exchange or other Government approved agencies and after holding interview according

to the Recruitment Rules, selection be made and appointment be given as Peon. Hence the names were called for from the Office of the Social Welfare Officer (Nabad Tribes), Amreli and the Office of the District Employment Officer, Amreli, without considering the case of the petitioner for regularisation, for the reasons best known to the authorities. It is this act of the authorities concerned which has resulted into gross injustice to the petitioner which forced him to approach this Court.

4. The office of the Social Welfare Officer forwarded 13 names, while the Employment Exchange, Amreli forwarded 10 names. The name of the petitioner did not find place amongst any of the two lists. Out of 26 persons who were called for interview on 06.01.1987, 18 persons remained present. Of those 18 persons, 2 persons were selected, of whom one Shri Mansukhbhai Popatbhai Dabasra was given appointment. The appointment was proposed by letter bearing No.AYU/ 1/ Bhurakhiya/ 57/ 87 dated 12.01.1987 and the appointment was sanctioned by the Director of Indian Medicine & Homeopathy System by his Officer Order No.MKM/ 3/ 2580/ 83/ 87 K dated 02.02.1988, after which Mr.M.K. Dabasra resumed duties on 04.02.1988. On Mr.M.K. Dabasra reporting for duty, the petitioner's services were terminated on 08.02.1988. Being aggrieved the petitioner filed the present petition, wherein the Court passed the following order on 15.07.1988:

> "Notice returnable on 12.8.88. Mr.Raval states on instructions that despite termination order, the petitioner is still working as Peon. If that is so, status quo regarding petitioner's working condition shall be maintained till further orders."

5. The District Ayurvedic Officer, District Panchayat, Amreli by his letter No.Ayu/ 1/ MKM-1 dated 17.03.1988 granted permission to engage the petitioner as a daily wager for one hour at a monthly salary of Rs.75/-, with effect from 01.03.1988. Thus, after the termination dated 08.02.1988 the petitioner again employed with effect from 01.03.1988. That is why, a statement was made before this Court on 15.07.1988 that the petitioner is still working as Peon. The petitioner was thereafter continued in service until he was retired on his reaching the age of superannuation on 30.09.2003.

6. On the other hand, Mr.M.K. Dabasra, who was

appointed as Peon on regular basis, and who has resumed on 04.02.1988, immediately sought for 'request transfer' which was granted by the Deputy District Development Officer (Establishment) by his order No.Establishment/ 1 (2) BDL (Transfer)/ Vashi/ 2452/ 88 dated 09.08.1988. Mr.M.K. Dabasra got himself relieved on 10.08.1988 (After Office Hours). It is reported that today he is serving as Peon in the Panchayat Branch at District Panchayat, Amreli. Thus, on the post on which the petitioner should have been given regular appointment, another person was recruited and before he could complete six months, he got 'request transfer' sanctioned. Since then it is on record that Class IV post of Peon has remained vacant and is not filled in till date by any regular Peon. The petitioner is discharging his duties, as he is again appointed as Part Time Peon. On paper, the appointment is for one hour and the remuneration is Rs.75/-, per month. But then the fact is that the Government did sanction the post of Peon and recruitment was made for the same and the person who was appointed on regular basis was granted request transfer and work is performed by the petitioner. From the aforesaid, it is clear as to how the Government officers are working. When there was workload for a regular Peon, the post was sanctioned and still work is taken from the petitioner by giving him an appointment for one hour.

7. The authorities are not able to satisfy this Court as to why the petitioner could not be regularised on the post on which he worked for long 23 years, i.e. from 09.08.1963 to 08.02.1988. When a regular Peon was recruited why without making an alternative arrangement, the Deputy District Development Officer granted 'request transfer' of that person, keeping the post vacant till date, i.e. for the next 15 years, i.e. from 1998 to 2003.

8. On 13.01.2004, this Court directed the District Development Officer to cause an inquiry in the matter. Pertaining to the appointment of Mr.M.K. Dabasra, the period for which he worked at Village Bhurakhiya, actual position of the post of Peon at Village Bhurakhiya, i.e. whether the post was filled in by any regular employee, if yes, the duration of the same. The District Development Officer has submitted a detailed report which is taken on record. In the report it is stated that a proposal was made by letter dated 18.10.1986 to absorb the petitioner as regular Peon. For no valid reason the said proposal was not accepted and instructions were issued to undertake the exercise of recruitment. In that exercise, said Shri M.K. Dabasra was recruited and

before he could complete six months his request for transfer was granted. Since then the post of Peon has remained vacant. Not only that after the services of the petitioner were terminated on 08.02.1988, by another letter dated 17.03.1988 the petitioner was given an appointment as a daily wager for one hour on monthly salary of Rs.75/-, with effect from 01.03.1988. Since then the petitioner continued to work at the same place, till he reached the age of superannuation on 30.09.2003. He has retired on attaining the age of superannuation.

9. There cannot be a better example of non application of mind on the part of the bureaucrats, be that the officers of the District Panchayat or the concerned department of the State Government. When a proposal was made by letter dated 18.10.1986 to absorb the petitioner on regular basis, there was nothing on the basis of which the Government could have refused to consider the case of the petitioner by granting necessary relaxations and appointing him on regular basis. Instead of that an exercise for regular appointment was undertaken. Besides, there is nothing on record to show that the District Panchayat authorities pursued the matter and tried to persuade the Government for absorption of the petitioner on regular basis. Only on account of this indifferent approach of the officers, the sufferer is the petitioner who had been discharging his duties sincerely right from 1963 till 2003, for long 40 years, except a break from 08.02.1988 to 01.03.1988.

10. The District Development Officer has tried to explain the certificate issued by the Sarpanch of Gram Panchayat, Bhurakhiya dated 23.11.2003, by saying that the same must have been issued, out of sympathy and emotions. It is easy to say that the certificate is issued by the Sarpanch of Village Panchayat because the petitioner is a resident of the village and on account of emotions, but then it is on record that the petitioner did work in the said hospital from 1963 to 2003 for a long period of 40 years. It is also apparent from the facts of this case that the attempts on the part of the Government to provide facilities to the residents of the area by providing them hospital/ rural health centre, got frustrated by impersonal approach of the officers who are in-charge of the affairs of such benevolent schemes. No reason is set out as to why the Deputy District Development Officer acceded to the request transfer of Mr.M.K. Dabasra without being mindful of the fact that he was recruited just before six months. Vice him no other person was posted at Village Bhurakhiya. If the officer in-charge of the affairs had approached the

matter with little more personal touch, the difficulties could have been reduced and the fruits of the benevolent scheme could have reached the people more effectively.

11. In the considered opinion of this court this is a fit case where the petitioner is required to be granted reliefs as prayed for. The petitioner has prayed that the respondents be directed, 'to regularise the petitioner's services and to appoint the petitioner as a regular employee on the post of Peon'. The matter was filed in the year 1988. It is unfortunate that the Court could not grant effective relief to the petitioner during his service tenure, but before it is too late, it is directed that the petitioner be considered as a regular employee with effect from 04.02.1988, the day on which Mr.M.K. Dabasra resumed charge of the post of Peon at village Bhurakhiya. The direction is issued with effect from 04.02.1988 only because it is on record that since then the Government appointed a person on regular basis, but then the post had remained vacant for all these years.

11.1 Accordingly, the petitioner be considered a regularly appointed employee for all purposes and he should be paid all admissible service benefits available to a regularly appointed employee including that of arrears of salary, etc. subject to adjustment of the amount which is paid to him by way of wages as a daily wager. The respondent authorities are directed to comply with this order within three months from the date of receipt of this order.

12. The petition is allowed. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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